

रजिस्टरेशन नं ० पी ०/एस ० एम ० १४



# राजपत्र, हिमाचल प्रदेश (असाधारण)

हिमाचल प्रदेश राज्यशासन द्वारा प्रकाशित

शिमला, शुक्रवार, 2 सितम्बर, 1983/11 भाद्रपद, 1905

हिमाचल प्रदेश सरकार  
ELECTION DEPARTMENT

## ERRATA

Shimla-171002, the 10th August, 1983

No. 3-11/73-Elec.—The Election Commission of India's Order No. 76/HP-LA/82, dated the 7th April, 1983, corresponding to 17 Chaitra, 1905 (Saka), regarding disqualification under section 10A of the Representation of the People Act, 1951, published *vide* this Department's Notification of even number, dated the 30th April, 1983 in the State Gazette (Extra-ordinary), dated the 2nd May, 1983, the word "रहित" appearing in third line at page 515 of the Gazette may be read as "निरहित".

By order.

Sd/-

Chief Electoral Officer,  
Himachal Pradesh.

## NOTIFICATION

Shimla-171002, the 12th August, 1983

**No. 3-15/83-ELN.**—The Election Commission of India's Notification No. 82/HP/(9/82)/83, dated the 30th July, 1983, corresponding to 8 Sravana, 1905 (Saka) containing the Judgment, dated the 1st July, 1983 of the High Court of Himachal Pradesh at Shimla in Election Petition No. 9 of 1982, is hereby published for general information.

By order,

Sd/-

Chief Electoral Officer,  
Himachal Pradesh.

## ELECTION COMMISSION OF INDIA

Nirvachan Sadan, Ashoka Road,  
New Delhi-1  
30th July, 1983

8 Sravana, 1905 (Saka)

## NOTIFICATION

**No. 82/HP/(9/82)/83.**—In pursuance of section 106 of the Representation of the People Act, 1951 (43 of 1951), the Election Commission hereby publishes the judgment, dated the 1st July, 1983 of the High Court of Himachal Pradesh at Shimla in Election Petition No. 9 of 1982.

## भारत निर्वाचन आयोग

अधीक्षक मार्ग,

नई दिल्ली-110001

30 जुलाई, 1983

तारीख

8 श्रावण, 1905 (शक्)

## अधिसूचना

संख्या 82/हि० प्र०/(9/82)/83—लोक प्रतिनिधित्व अधिनियम, 1951 (1951 का 43) की धारा 106 के अनुसरण में, निर्वाचन आयोग 1982 की निर्वाचन अर्जी सं 9 में शिमला में स्थित हिमाचल प्रदेश के उच्च न्यायालय के तारीख 1 जुलाई, 1983 की निर्णय एतदवारा प्रकाशित करता है।

## IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

ELECTION PETITION NO. 9 OF 1982

Date of Decision: July 1st, 1983

Shri Man Chand

Petitioner.

Shri Shanta Kumar and others

Versus

Respondents.

The Hon'ble Mr. Justice T. R. Handa, J.

For the Petitioner

.. Shri O. P. Sharma, Advocate.

For the Respondent

.. Shri K. S. Patyal, Advocate for respondent

No. 1.

T. R. HANDA, J.

During the last general election for the Legislative Assembly of the State of Himachal Pradesh held in May, 1982, the petitioner and all the four respondents contested from 45—Sukh

*Assembly constituency.* The main contest, however, was between the petitioner Shri Man Chand and respondent No. 1 Shri Shanta Kumar. The petitioner had contested as a Congress (I) candidate while respondent No. 1 had contested from the B.J.P. ticket. Respondent No. 1 who was the Chief Minister of this State during the Janata regime polled the highest number of votes and was declared successful. The petitioner got the second highest number of votes. The difference between the number of votes polled by respondent No. 1 and the petitioner was 3,148. The other respondents had all lost their securities.

The petitioner who could not reconcile himself with his defeat has filed the present election petition under section 81 read with section 100 and 101 of the Representation of People Act, 1951 (hereinafter referred to as 'the Act') praying that the election of respondent No. 1 be declared void and instead the petitioner be declared to have been duly elected from the aforesaid Assembly constituency.

The only ground on which the petitioner seeks to challenge the election of respondent No. 1 is that this respondent had during the conduct of the election committed a corrupt practice within the meaning of section 123(7) (c) of the Act. The substance of this alleged corrupt practice is that respondent No. 1 had appointed Subedar Kishore Chand, a serving member of the Armed Forces of the Union as his polling agent for polling station Chowki on 19-5-1982, the day of poll and had also procured/obtained the assistance of the said Subedar Kishore Chand for furtherance of his election prospects.

The particulars of the alleged corrupt practice have been given in paragraphs 5 to 12 of the election petition. The material particulars, however, are found in para No. 6 of the petition which may be extracted in extense:—

"6. Shri Kishore Chand was asked to canvass in favour of returned candidate and his services were obtained and procured by the returned candidate by specifically requesting Naib-Subedar Kishore Chand to act as Polling Agent of the Respondent and to campaign for the furtherance of election prospects of the returned candidate by himself on 19-5-1982 at Chowki Jona. On 10-5-1982 in the evening at Village Chowki, Sarvshri Pahar Chand, Up-Pradhan, Khairaut Panchayat, Punno Ram, resident of Khairaut, Rana Vijay Singh of Khera, Capt. Trilok Chand of Khera and Prem Singh, Pradhan Jain Panchayat, Tehsil Palampur were canvassed by Shri Kishore Chand above named in Village Chowki to vote for the returned candidate. This he did with the consent of the returned candidate and for his benefit. The returned candidate further in the presence of *all the persons present there* had asked Naib-Subedar Kishore Chand to act as his polling agent at Polling Station at Village Chowki and to canvass for votes and work for him not only in his village but also throughout the constituency. This wish and desire was faithfully carried by Shri Kishore Chand, in fact he was instrumental in getting the returned candidate elected. Naib-Subedar Kishore Chand is the member of the Armed Forces of the Union and is serving in 23 Punjab Regiment. These are the material facts and further the petitioner has set forth as full a statement as possible of the corrupt practice committed by the returned candidate under section 123(7) (c) of the Act."

The other particulars briefly stated are:—

- (i) on 11-5-1982 Subedar Kishore Chand collected 15-20 persons including Sarvshri Sadhu Ram and Jagan Nath at Village Daroh and asked them to support respondent No 1. Thereafter he went from house to house in that village.
- (ii) on 12-5-1982 Subedar Kishore Chand actively canvassed for respondent No. 1 in village Sulah in the presence of Sarvshri Phuman Ram, Surinder Singh and Parshotam Chand and others.

- (iii) on 13-5-1982 Subedar Kishore Chand collected about 15 persons in village Kiarvan and asked them to vote for respondent No. 1. This was witnessed by Shri Banka Ram and others.
- (iv) on 14-5-1982 Subedar Kishore Chand organised a public meeting in village Dhira which was attended by about 15 persons including Sarvshri Chaman Singh, Bachhitar Singh and Tara Chand and in that meeting he canvassed for respondent No. 1.
- (v) on 15-5-1982 a meeting was organised by the Congress (I) party at Naura which was attended by more than 20,000 persons. It was addressed amongst others by Smt. Indira Gandhi, the Prime Minister of India. In this meeting also Subedar Kishore Chand canvassed for respondent No. 1.
- (vi) on 16-5-1982 a meeting of the Bharatiya Janata Party was organized at Chowki which was addressed by Subedar Kishore Chand who canvassed for respondent No. 1.

Respondent No. 1 in his reply denied all the allegations of corrupt practice made against him. His plea in short is that he did not know Subedar Kishore Chand nor did he ever appoint him as his polling agent. Similarly he pleaded that he never approached any Subedar Kishore Chand to seek his assistance for furtherance of his election prospects.

On the pleas of the parties the following issues were struck:—

- (1) Whether respondent No. 1 appointed Naib-Subedar Kishore Chand a member of the Armed Forces of the Union as his polling agent?
- (2) Whether Naib-Subedar Kishore Chand actually acted as Polling Agent of respondent No. 1 during the election?
- (3) Whether respondent No. 1 specifically requested Naib-Subedar Kishore Chand to campaign for the furtherance of his election prospects as alleged in para No. 6 of the petition?
- (4) Whether Naib-Subedar Kishore Chand actually canvassed for respondent No. 1 as alleged in para 6 to 12 of the petition?
- (5) Whether the petitioner is entitled to be declared to have been duly elected to the Legislative Assembly seat pertaining to Sulah constituency?

#### *Issues Nos. 1 & 2:*

Both these issues are inter-connected and can be disposed of together.

Section 46 of the Act relates to the appointment of polling agents. It *inter alia* provides that a candidate or his election agent may appoint in the prescribed manner such number of polling agent for each polling station as may be prescribed. The manner of such appointment has been prescribed in rule 13 of the Conduct of Elections Rules, 1961. This rule reads:—

- "13. *Appointment of Polling Agents*.—(1) The number of polling agents that may be appointed under section 46 shall be one agent and two relief agents.
- (2) Every such appointment shall be made in Form 10 and shall be made over to the polling agent for production at the polling station or the place fixed for the poll, as the case may be.
- (3) No polling agent shall be admitted into the polling station or the place fixed for the poll unless he has delivered to the presiding officer the instrument of his appointment, under sub-rule (2) after duly completing and signing before the presiding

officer the declaration contained therein".

It is thus obvious that the appointment of an polling agent has to be made by a candidate only on Form 10 which he must complete and sign before the appointment can be said to have been validly made. Not only that this appointment has to be accepted by the polling agent concerned who in token thereof is required to sign this Form along with the candidate. After it is so done the polling agent is required to make and sign a declaration as found in part II of the Form in the presence of the Presiding officer of the concerned polling station. It is thereafter that the polling agent can be allowed entry at the polling station and to act as polling agent the candidate appointing him.

In the instant case Ex. P.W. 23/1 is the original Form 10 which, according to the petitioner, relates to the appointment of Subedar Kishore Chand as polling agent of respondent No. 1. A simple look at this Form would suggest that by this Form respondent No. 1 Shri Shanta Kumar purports to have appointed one Shri Kishore Chand of B. J. P. as his polling agent for polling station No. 45/20 village Chowki. This Form was never put to respondent No. 1 when he appeared in the witness box. In any case even if it be assumed that this Form was signed by Shri Shanta Kumar as it purports to be, this would only show that Shri Shanta Kumar respondent No. 1 had by virtue of this Form appointed one Shri Kishore Chand of B.J.P. as his polling agent. There is practically no evidence adduced on the record which could suggest that Shri Kishore Chand of B.J.P. referred to in this appointment Form Ex. P.W 23/1 is Subedar Kishore Chand who was then a serving member of the Armed Forces of the Union. This Form was produced from the record by Shri Prithi Singh and was proved by Shri Milap Chand P.W.24 who had acted as presiding officer at polling station Chowki during the elections. This P.W. in clear terms stated that he did not know the person Kishore Chand who had actually produced this Form Ex. P.W. 23/1 before him. He further stated that the person who so produced this, Form was not introduced to him by any third person. This witness was, therefore, not in a position to state whether the person who produced the Form before him was actually Kishore Chand muchless if he was Subedar Kishore Chand.

It may be observed that as per rules the presiding officer of a polling station is required to show the empty ballot boxes to the polling agents of the candidates present at the polling station before the commencement of the poll and then seal them in the presence of such polling agents. The presiding officer then obtains the signatures of the polling agents present in the polling station to whom such ballot boxes were shown and these signatures are obtained on a Form known as appendix IV. After the completion of the poll, the ballot boxes are again sealed and that is also done in the presence of the polling agents and the signatures of such of the polling agents who are present are again obtained. The form appendix IV pertaining to Chowki polling station has not been produced. The failure on the part of the petitioner to summon that form justifies me to draw the inference that the signatures of Kishore Chand did not appear on that appendix IV form. Again, in case Subedar Kishore Chand had produced this Form Ex. P.W. 23/1 at the polling station and had acted as polling agent of respondent No. 1, this fact must have been noticed by a number of voters who had visited the polling station on the day of poll to cast their votes. The petitioner, however, could not produce even one of such voters who could claim to have been Subedar Kishore Chand working at the polling station as polling agent of respondent No. 1. In any case the petitioner had his own polling agent at polling station Chowki who was Prem Singh Ex. P.W 23/2 is Form 10 pertaining to the appointment of Prem Singh by the petitioner. This Prem Singh was the best witness who could depose if Subedar Kishore Chand was seen at the polling station acting as polling agent of respondent No. 1. This Prem Singh had been summoned as a P. W. by the petitioner and was present in Court on November 3, 1982. The counsel for the petitioner however *vide* his statement made on that date gave up this witness for reasons not disclosed. The logical presumption is that this Prem Singh, though polling agent of the petitioner himself, was not in a position to support the petitioner on this point.

Thus the only evidence produced by the petitioner in support of this issue is the Form 10 pertaining to the appointment of one Kishore Chand of B.J.P. as polling agent of respondent

No. 1 (Ex. P.W. 23/1). In the absence of any cogent evidence to fix the identity of "Shri Kishore Chand of B.J.P." as mentioned in this Form Ex. 23/1 it is not possible to hold that this appointment form related to the appointment of Subedar Kishore Chand, a serving member of the Armed Forces of the Union. It may be remarked that the standard of proof required to establish a charge of corrupt practice in election cases is the same as required to prove a charge in a criminal trial and the onus of proving this charge is always on the petitioner just as the onus of proving criminal charge is on the prosecution looking from that standard it can be said without any hesitation that the petitioner has failed to prove if Subedar Kishore Chand, a serving member of the Armed Forces of the Union, was appointed as his polling agent by respondent No. 1. Both these issues are decided against the petitioner.

*Issue No. 3:*

The particulars of corrupt practice forming subject matter of this issue find mention in para 6 of the petition which has been extracted in extense above. According to the averments made in this paragraph Shri Kishore Chand Subedar in the evening of 10-5-1982 canvassed for respondent No. 1 and the persons so canvassed were Sarvshri Pahar Chand, Punno Ram, Rana Vijay Singh, Capt. Trilok Chand, Prem Singh and Pradhan Jain Panchayat. It was in the presence of these persons that respondent No. 1 had asked Subedar Kishore Chand to act as his polling agent at polling station Chowki and to canvass and work for him not only in village Chowki but throughout the constituency. The petitioner, however, examined only three witnesses to prove that respondent No. 1 had on 10-5-1982 at village Chowki sought for the assistance of Subedar Kishore Chand and that Kishore Chand had actually canvassed for respondent No. 1. These witnesses are P.W. 2 Pahar Chand, P.W. 3 Trilok Chand and P.W. 7 Rana Vijay Singh. P. W. 2 Pahar Chand was the polling agent of the petitioner. He made a parrot like statement inasmuch as the only question which was put to this witness by the counsel for the petitioner was "what do you know about electioneering at and around your village?" In response to this question the witness volunteered the following statement:—

"On 10th May I went to village Chowki. There a meeting was being held in connection with the election campaign of Shri Shanta Kumar, respondent No. 1. Shri Shanta Kumar was addressing that meeting. When I reached that meeting Shri Shanta Kumar was saying that after him Subedar Kishore Chand Sahib will address the meeting. Thereafter Subedar Kishore Chand addressed that meeting and called upon the gathering to vote for Shri Shanta Kumar whom he described the next Chief Minister of the State. He further told the gathering that he did come on leave for canvassing for Shri Shanta Kumar. After Subedar Kishore Chand finished his address, Shri Shanta Kumar told the gathering that Subedar Kishore Chand would work for him during the elections and also act as polling agent at Chowki. I know only this much about the election campaign."

P.W. 3 Trilok Chand is a resident of village Khaira. He claims to have reached village Chowki on 10-5-1982 on his way back from village Juna where he had gone in connection with the treatment of his wife. According to this witness when he reached village Chowki he saw a meeting of B.J.P. in progress which was then being addressed by Kishore Chand Subedar who was telling the gathering that he had come on two months leave from the Army to canvass for Shanta Kumar so that a man from Kangra would become Chief Minister of the State and work for them. In his cross examination this witness admitted that he did not know Subedar Kishore Chand before that date. *Inter alia* a question was put to him as to how he learnt about the identity of the person who was addressing the meeting. In answer to that question the witness explained that before Kishore Chand had started his address Shanta Kumar respondent No. 1 had announced that Subedar Kishore Chand would next address the meeting. This explanation is obviously inconsistent with his earlier statement where the witness had stated that when he reached Chowki the meeting was being addressed by Kishore Chand Subedar. He therefore, had no occasion to hear Shanta Kumar who is alleged to have made his announcement before the

commencement of the address of Kishore Chand. Proceedings under section 163 of the H.P. Land Revenue Act had been initiated against this witness for illegal encroachment of Government land during the period when respondent No. 1 was the Chief Minister. These proceedings have now been dropped. This witness had thus a grievance against the Janata Government and may be for that reason that he has came to depose against respondent No. 1. The third witness Rana Vijay Singh is the brother of Prem Singh who had acted as polling agent of the petitioner. He is from village Jain. He stated that on 10-5-1982 he was returning to his village from the place of some relation when on the way at village Chowki he saw a meeting being held which was being addressed by Shanta Kumar respondent No. 1. Shri Shanta Kumar then told the gathering that Subedar Kishore Chand would next address the meeting. After Kishore Chand addressed the meeting Shri Shanta Kumar once again told the gathering that Subedar Kishore Chand would act as his polling agent as also election agent and also campaign for him from house to house.

The plea of respondent No. 1 on the other hand is that he never visited village Chowki on 10-5-1982 and as such there was no occasion for him to have met Subedar Kishore Chand or to have asked him to canvass for him. According to respondent No. 1 he was on tour in District Hamirpur on 10-5-1982. While in the witness box he deposed that on the morning of 10-5-1982 he left Palampur for Hamirpur by his own car at about 8 A.M. He reached Sujanpur Rest House at about 11 A.M. after crossing river Beas bridge near Sujanpur where he paid toll tax for his car bearing registration No. HPS 3909. At Sujanpur he was received by his party members Sarvshri Anand Sarup Pradhan Bharatiya Janata Party, Hamirpur district and Shri Lashkari Ram who was the candidate at the election from Bamson constituency. At about 11 A.M. he left Sujanpur in a jeep along with the aforesaid two persons for village Khairi where he addressed election meetings in the constituency of Shri Lashkari Ram. He then came back to Sujanpur from where he was taken to Nadaun constituency by Shri Dhani Ram the candidate of that constituency. After addressing the election meetings in the constituency of Shri Dhani Ram he reached Circuit House Hamirpur at about 9 P.M. and stayed for the night there. According to respondent No. 1 the distance between Sujanpur and Chowki could be covered in about three hours and between Hamirpur and Chowki in about  $3\frac{1}{2}$  to 4 hours. In other words it would take 6 hours for a person to go from Sujanpur to Chowki and come back and from 7 to 8 hours to go from Hamirpur to Chowki and come back. R.W. 1 Shri Kishore Lal Sharma, Assistant, Office of the Sub-Divisional Officer, H.P. P. W. D., Sujanpur deposed from the record that toll tax amounting to Rs. 2.50 was collected in respect of vehicle No HPS 3909 which crossed Beas bridge at Sujanpur at 9.50 A. M. on 10-5-1982. R. W. 2 Shri R.K. Gupta, Junior Engineer, H.P.P.W.D. Sub-Division No. II, Hamirpur deposed from his record that Shri Shanta Kumar, Ex. M.L.A. had arrived at the Circuit House Hamirpur on 10-5-1982 at 9 P. M. and had left on the following morning at 10 A. M. He brought the original register containing the relevant entry which was seen and returned. The respondent further examined Sarvshri Anand Sarup, Lashkari Ram and Dhani Ram who appeared as R.W. 5, R. W. 6 and R. W. 7 who duly corroborated the version given by him with respect to his programme for 10-5-1982. I find no reason to doubt the veracity of respondent No. 1 which is duly supported not only by R.W.S. Anand Sarup, Lashkari Ram and Dhani Ram but finds due corroboration from the official record produced by Sarvshri Kishore Lal Sharma and R. K. Gupta referred to above. The evidence of the petitioner on the other hand found in the statements of P.W. 2 Pahar Chand, P.W. 3 Trilok Chand and P.W. 7 Rana Vijay Singh inspires no confidence. It being not the case of the petitioner that respondent No. 1 had approached Subedar Kishore Chand to seek his assistance at any place or date except on 10-5-1982 at Village Chowki, I must decide this issue against the petitioner.

#### Issue No. 4:

In view of my finding on issue No. 3 no findings need be returned on this issue inasmuch as the fact whether Subedar Kishore Chand actually canvassed for respondent No. 1 or not would not be

relevant unless it is shown that he did so with the consent of respondent No. 1. I may, however, deal with the evidence led on this issue. P.W. 4 Sadhu Ram and P.W. 5 Jagan Nath are the witnesses with respect to the canvassing alleged to have been done for respondent No. 1 by Subedar Kishore Chand in Village Daroh on 11-5-1982. P.W. 4 Sadhu Ram runs a tea stall at Village Daroh. He stated that a meeting was addressed by Subedar Kishore Chand near his tea stall on 11-5-1982 where he canvassed for respondent No. 1. This witness did not know Subedar Kishore Chand personally. He explained that it was on his enquiry that the person who addressed the meeting gave his identity and introduced himself as Subedar Kishore Chand. This witness thus has no personal knowledge with respect to the identity of the person who is alleged to have canvassed for respondent No. 1 in his presence. The other witness P.W. 5 Jagan Nath is the father of Ravinder Nath who acted as polling agent of the petitioner. He also deposed that on 11-5-1982 Subedar Kishore Chand had visited his Village Daroh and addressed a gathering where he canvassed for respondent No. 1. According to this witness different parties had been coming to his village in connection with the election campaign but he was not in a position to give the date of any other meeting of any other party held in connection with the elections in his village. He could assign no particular reason as to why he could remember the date of the meeting addressed by an unimportant person like Subedar Kishore Chand and why he could not remember the meeting addressed by other important persons like Shri Shanta Kumar.

Subedar Kishore Chand is then alleged to have addressed meetings in Village Sulah on 12-5-1982. P.W. 6 Phuman Ram and P.W. 8 Parshotam Chand are the witnesses of this meeting. P.W. 6 Phuman Ram is a Congress worker. He claims to have heard the meeting addressed by Subedar Kishore Chand in support of Shri Shanta Kumar on 12-5-1982. In his cross examination he stated that he did not attend any other meeting during the elections except that addressed by Subedar Kishore Chand. I am unable to appreciate as to how he was interested in attending the meeting addressed by Subedar Kishore Chand which it may be observed was addressed in a village other than his own and why he could remember the date of the said meeting. P.W. 8 Parshotam Chand was the polling agent of the petitioner. He deposed that Subedar Kishore Chand came to his house on 12-5-1982 in Village Sulah and compelled the witness to accompany him for canvassing for the Bharatiya Janata Party. The witness then accompanied Subedar Kishore Chand and visited different houses and asked the people to vote for Shri Shanta Kumar. It is simply unbelievable that the witness who was admittedly the polling agent of the petitioner should have canvassed for B.J.P. and that too at the instance of Subedar Kishore Chand with whom he had no relation.

The next meeting which Subedar Kishore Chand is alleged to have addressed was held at Village Kiar on 13-5-1982. The only witness to depose about this fact is P.W. 9 Banka Ram who again was the polling agent of the petitioner. According to him Shri Shanta Kumar respondent No. 1 also held a meeting in his village but he could not remember the date of that meeting. When specifically asked the reason as to why he remembered the date of the meeting addressed by Subedar Kishore Chand and not the one addressed by Shri Shanta Kumar the witness expressed his inability to offer any explanation.

On 14-5-1982 again Subedar Kishore Chand is alleged to have addressed a meeting in Village Dhira. P.W. 10 Tara Chand and P.W. 16 Bachitar Singh are the witnesses produced to depose about this meeting. P.W. 10 immediately after taking oath and without being asked any question proceeded to narrate his tutored version like this:

"Village Dhira is about 2 or 3 miles from Village Gagal. During the last elections some persons from the B.J.P. came to village Dhira on 14th May. They included Bakshi Chand and Kishore Chand of village Chowki. They were holding a meeting in the Bazar of village Dhira. I had gone there for shopping when I saw them conducting the meeting. Shri Kishore Chand was addressing the meeting and he was telling the gathering that they were to make Shri Shanta Kumar, the Chief Minister and hence the people should vote for him. I heard only this much. I

know Kishore Chand. He is employed in the Army. I know the respondent Shri Shanta Kumar also. He was our Chief Minister also."

In his cross examination he had first stated that he knew Kishore Chand for a sufficiently long period, he had immediately to recile from this statement and then stated that he saw Kishore Chand for the first time only on 14-5-1982 in village Dhira. According to this witness Kishore Chand gave his self introduction with respect to his being an Army personnel. This witness in other words had no personal knowledge about the identity of the person about whom he had made the statement. P.W. 16 Bachitar Singh also deposed having attended the election meeting held at village Dhira on 14-5-1982 and which was addressed by Kishore Chand and Bakshi Chand. In his cross examination he stated that he did not know of any other meeting held in his area by any other party except the one which was addressed by Subedar Kishore Chand on 14-5-1982 at Dhira and the other addressed by Smt. Indira Gandhi at Village Naura.

The further case of the petitioner is that on 15-5-1982 there was a gathering of over 25,000 of persons at village Naura where an election meeting had been organized by the Congress (I) Party. That meeting had been addressed among others by Smt. Indira Gandhi, the Prime Minister of India. P.W. 11 Tara Chand, P.W. 12 Jagat Ram, P.W. 13 Tarlok Chand, P.W. 14 Hari Singh, P.W. 15 Nikka Ram, P.W. 18 Salig Ram, P.W. 19 Madan Lal, P.W. 20 Chuhar Singh and P.W. 22 Jagat Ram were produced to show that in the course of that meeting Subedar Kishore Chand had canvassed for Shri Shanta Kumar and Bharatiya Janata Party. Some of these witnesses claim to be knowing Subedar Kishore Chand personally. All of them it may be stated are the active workers of the Congress (I) Party. The version given by these witnesses is simply unbelievable. It is beyond my comprehension that Subedar Kishore Chand was allowed to canvass for the Bharatiya Janata Party in the meeting which had been organized by the Congress (I) Party and that he was allowed to do so in the very presence of the Congress workers. Apart from that there are serious discrepancies in the statements of these witnesses. Since the version itself looks quite unnatural and incredible I need not discuss those discrepancies. With respect to the meeting alleged to have been held at village Chowki on 16-5-1982 the petitioner examined only one witness, namely, Ram Singh P.W. 17. According to him there was a gathering of 15 or 20 persons which was addressed by Subedar Kishore Chand on that day. In his cross examination the witness deposed that Shri Shanta Kumar respondent was not present in the meeting. He then added that Shri Shanta Kumar had visited village Chowki on 10-5-1982 but the witness was not present in the village on that day. This only shows how interested this witness was to support the cause of the petitioner.

The evidence as discussed above with respect to the various meetings alleged to have been addressed by Subedar Kishore Chand in support of respondent No. 1 looks quite incredible and cannot be relied upon. This issue is also found against the petitioner.

#### *Issue No. 5:*

No evidence was produced by the petitioner on this issue nor either party cared to address me on this issue. This issue is accordingly found against the petitioner.

As a result of my findings above, I hold that the respondent committed no corrupt practice in the course of this election and dismiss this petition. I further direct that the petitioner shall pay the costs of the respondent which are assessed at Rs. 1,000/-.

Intimation with respect to the result of this election petition be communicated forthwith to the Election Commission as also to the Speaker, Himachal Pradesh Legislative Assembly.

An authenticated copy of this judgment be also forwarded to each of these authorities as soon as possible.

Sd/-  
T. R. HANDE, J.

July 1, 1983

By order,  
O. N. NAGAR,  
*Under Secretary,*  
*Election Commission of India.*

नियन्त्रक, भुद्रण तथा लेखन सामग्री, हि० प्र०, शिमला-५ द्वारा मुद्रित तथा प्रकाशित।